

PREHEARING ORDER OF COMMISSION

In the matter of Objection No. 012 filed by Local Union No. 545 of the International Brotherhood of Electrical Workers (Objector) on April 7, 2006, to Annual Wage Order No. 13, pertaining to the wage rate for the occupational title of Electrician (Inside Wireman) in the Missouri County of Holt, Section 044; issued by the Division of Labor Standards, Department of Labor and Industrial Relations, filed with the Secretary of State: March 10, 2006.

I. Prehearing Conference

On May 4, 2006, pursuant to 8 CSR 20-5.010(3)(A), a prehearing conference was convened on the above-referenced Objection for the purpose of aiding in the disposition of the hearing. Present at the prehearing conference were:

Assistant Attorney General Michael Pritchett, counsel for the Division of Labor Standards (Division);
Allen E. Dillingham, for the Division;
James J. Boeckman, for the Division; and
Martin W. Walter, counsel for Objector, Local Union No. 545 of the International Brotherhood of Electrical Workers (IBEW Local 545)

Susan Venturella is the Commission's designated representative and presided over the prehearing conference.

II. Prefiled Testimony and Exhibits

In accordance with the procedure to be followed at the hearing, as set out in 8 CSR 20-5.010(4), the following evidence was submitted:

For Objector:

The sworn statement of Frank Nurski, Director of Organizing of Local Union No. 545 of the International Brotherhood of Electrical Workers, and accompanying exhibits.

For the Division:

The prepared direct testimony of Allen E. Dillingham, Director of the Missouri Division of Labor Standards, and referenced exhibits.

III. Issues for the Hearing

Objector challenges the Division's determination that the prevailing wage for the occupational title of Electrician (Inside Wireman) in Holt County is \$18.00 per hour. Objector proposes a rate of \$39.55 (\$28.24 hourly and total fringes of \$4.85 + 22% of gross payroll). Objector asserts that the Division has not considered 1112.25 hours (disputed hours) worked at the rate set forth in the collective bargaining agreement between IBEW Local 545 and the St. Joseph Division, Kansas City Chapter of NECA. Objector has submitted payroll records and/or contractor reports allegedly substantiating that the collective bargaining agreement rate is the rate at which the plurality of the hours were worked for the occupational title of Electrician (Inside Wireman) in Holt County.

Objector does not dispute that Objector did not report the disputed hours it now seeks to substantiate to the Division before the Division filed Annual Wage Order No. 13. Nonetheless, Objector contends that the disputed hours are timely reported because the Prevailing Wage Law allows hours to be reported and substantiated through the objection process. Alternatively, Objector argues that the Division's refusal to accept hours after the Division-established deadlines is a change in policy that should only be applied prospectively.

The Division responds that the wage rate identified in Annual Wage Order No. 13 reflects the rate for which the most hours were reported as of the expiration of the reporting deadline, including grace period, established by the Division. The Division argues the disputed hours are not properly includible in the determination of the prevailing wage because Objector did not report the disputed hours before the deadline for reporting said hours as established by the Division. The Division asserts that the inclusion of hours reported after the deadline is inappropriate in that the allowance of late reporting:

- results in unnecessary delay and expense in finalizing the annual wage order, thereby, increasing both the public and private cost of the wage survey process;
- creates a disincentive to timely reporting; and,
- provides an advantage to entities who disregard the deadlines and file late vis-à-vis those entities who respect the deadlines and report no hours after the deadline.

IV. Hearing

The hearing before the Commission is scheduled for Monday, May 22, 2006, at 10:00 a.m. and if necessary, for Tuesday, May 23, 2006, at 10:00 a.m., in Jefferson City, Missouri. The location of the hearing is the Department of Labor and Industrial Relations Building, 3315 West Truman Boulevard, in the second floor conference room.

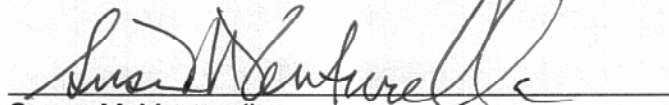
If there are no factual issues in dispute between the parties, the Commission will entertain a joint request to consider the legal issues presented upon written briefs. Such request will be granted provided the request is accompanied by a written stipulation of fact executed by all parties.

"No direct evidence, other than the testimony and documents filed at the prehearing conference, will be allowed at the hearing, except at the discretion of the Commission." 8 CSR 20-5.010(4)(B)4.

This Order is prepared in accordance with 8 CSR 20-5.010(3)(B) and is hereby executed by the Commission's designated representative.

Given at the City of Jefferson, State of Missouri, this 11th day of May 2006.

LABOR AND INDUSTRIAL RELATIONS COMMISSION



Susan M. Venturella
Designated Representative